

## APPENDIX F

### SUMMARY OF PUBLIC COMMENTS TO THE DRAFT ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING ("AI") AND DHCD RESPONSES TO RECOMMENDED CHANGES

The Draft AI invited written comments, to be recorded in an appendix of the final AI document, until January 1, 2007. DHCD later conducted a public hearing on the Draft AI in Northampton, Massachusetts on February 22, 2007 and in Boston, Massachusetts on February 23, 2007.<sup>1</sup> Comments to the Draft AI were submitted orally and in written form. Written comments were accepted until March 23, 2007.

#### Summary of Recommended Changes to the DRAFT AI by Topic and DHCD RESPONSES

##### A. Obligations of other state agencies

###### *Recommendations:*

--Judith Liben, MLRI<sup>2</sup>: The AI should concentrate equally on other agencies that deal with housing, such as MassHousing, MHP<sup>3</sup>, DTA<sup>4</sup> housing, DMR<sup>5</sup>, DMH<sup>6</sup>, and others.

--Tory Rocket, FHCGB<sup>7</sup>: AI is meant to be a blueprint for all agencies; the AI should be used to define actions DHCD will take and what others should take

*Response:* DHCD agrees and aims to create a blueprint for affirmatively furthering fair housing for housing agencies. The Analysis of Impediments to Fair Housing ("AI") is the first step towards this end, and with the assistance of the Fair Housing Advisory Panel, DHCD intends to further develop implementation goals for the Commonwealth.

DHCD produced the AI pursuant to its obligation to affirmatively further fair housing. It provides a legal framework, data analysis, and recommendations that can be used by other agencies and jurisdictions when formulating their own analyses, and includes recommendations for DHCD's quasi-public partners. Additionally, HUD provides that a jurisdiction may include actions it plans to take to overcome the effects of the identified impediments to fair housing choice during the coming year in its Annual Plan that is submitted as part of the Consolidated Plan. As such, prior to the release of its FY 2008 Action Plan, DHCD will further identify nearer-term implementation activities that it will undertake in collaboration with its state partners.

To the extent that DHCD does not share responsibility with other public and quasi-public agencies on housing programs such as the Low Income Housing Tax Credit program (LIHTC) with MassHousing, Soft Second Loan Program with MHP, the Facilities Consolidation Fund and Section 8 Housing Choice Voucher programs with DMR and DMH, and the McKinney Local Housing Authority Transitional Housing Program with DTA, DHCD will advise its state and

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<sup>1</sup> Public Presentation and Comment Exchange meetings were also held on the Draft AI in: Worcester on February 16, 2007; Andover on February 20, 2007; Barnstable on February 21, 2007; Northampton February on 22, 2007, and Boston on February 23, 2007.

<sup>2</sup> Massachusetts Law Reform Institute.

<sup>3</sup> Massachusetts Housing Partnership.

<sup>4</sup> Department of Transitional Assistance.

<sup>5</sup> Department of Mental Retardation.

<sup>6</sup> Department of Mental Health.

<sup>7</sup> Fair Housing Center of Greater Boston.

quasi-public partners on the duty to affirmatively further fair housing, as well as actions that should be taken in response to identified impediments.

B. Senior level fair housing position

*Recommendations:*

--Tory Rockett, FHCGB: As there is a lack of fair housing capacity within the state government itself, DHCD should hire a director with significant authority that reports directly to the undersecretary and that does policy analysis and program impact rather than just looking at individual complaints.

--Barbara Chandler, Adaptive Environments: Fair housing staffing should be done on a more senior level whose only responsibility is fair housing reports directly to the Undersecretary of DHCD. The director should have the authority to review and approve agency and individual program policies and practices to ensure compliance, and to promote fair housing principles and implementation within DHCD's interactions with its partners, and a close working relationship with fair housing and civil rights agencies.

--Evelyn Milorin, Boston Center for Independent Living: United Housing wants to DHCD to establish a senior level staff position over all fair housing concerns.

*Response:*

As DHCD has determined that fair housing is of great importance to the agency, the fair housing staff position has been located in the Office of the Chief Counsel to promote integration of fair housing in all DCHD programs. Duties of said position include providing policy recommendations to the Undersecretary and advising on the integration of fair housing principles in state programs. In addition, the Fair Housing Specialist serves as an ombudsman on fair housing issues.

C. Provide specialized intra and inter-agency fair housing education and outreach

*Recommendations:*

--Judith Liben, MLRI: Given the Commonwealth's legal responsibility to affirmatively further fair housing, DHCD or another agency should provide training to upper level housing-related program staff in all state agencies so they can learn not only how to recognize housing discrimination, but how to understand the racial effects of their programs and policies and develop plans to address those results if necessary (i.e., LIHTC disproportionately locates housing in poor and minority areas).

--Judith Liben, MLRI The AI should require a continuing series of fair housing conferences and trainings for the directors and upper level staff of all relevant state agencies, with a timetable and details as to who will attend, what should be covered and how to measure fair housing success. As a result of those meetings and trainings, DHCD should develop specific suggestions on how agencies can improve performance and better contribute to the cause of integrated housing and improved communities.

--Tory Rockett, FHCGB: DHCD should provide fair housing training to upper level staff and to upper level staff of other state agencies

--Barbara Chandler, Adaptive Environments: DHCD should split this action step into two action steps—one action step for fair housing training and one action step for subsequent implementation into policies and procedures. DHCD should have a series of fair housing trainings based on the responsibilities of particular departments of DHCD, i.e., those that handle accessibility, tenant selection and marketing, etc. Trainings should be done with the assistance of non-profit sectors that have wealth of knowledge and are willing to cooperate. A series of facilitated discussions should be conducted after the trainings within each department to allow for an in-depth analysis of how to implement fair housing into policies and

practice. DHCD should consider the additional step of formalizing discussion outcomes into staff handbooks for ongoing reference and guidance for new staff.

*Response:*

DHCD agrees that ongoing education and training are necessary and will consider the above recommendations with respect to its planning and provision of fair housing training for DHCD staff and staff of other relevant state agencies and quasi-public partners, and with respect to implementation of policies and procedures. DHCD agrees with consideration of external sources for trainings and materials. DHCD will also incorporate discussion on the integration of fair housing principles into programs and activities in its regularly scheduled meetings with its quasi-public partners.

D. Expand CBH and other housing programs for the disabled

*Recommendations:*

--Billy Tyler, on behalf of disabled persons in the Boston area: More money is needed for a higher percentage of housing for persons with wheelchairs. More money for private housing for persons with wheelchairs is needed also.

--Laurie Bloom, Justice Resource Institute: Increase subsidies for supportive housing programs. We ask that DHCD, as a reflection of its clear commitment to removing impediments to access to fair housing, including for the fair housing population, take leadership in ensuring that supported housing programs for the disabled, including JRI Health TBRA (Section 8 Housing Choice Voucher Tenant Based Rental Assistance for persons with HIV/AIDS that links rental assistance and appropriate supportive services) and HOP (Section 8 Housing Choice Voucher Housing Options Program targeted to homeless disabled households that supplements rental assistance funds with ongoing supportive services), continue to receive sufficient access to rental subsidies such that disabled individuals and their families, who are in need of not only affordable housing but also supportive services to access and maintain their housing, can continue to be served. DHCD should work with JRI to create a pool of vouchers that would be utilized to "graduate" individuals from the program who are ready to live more independently, thus freeing up supported housing program subsidies for those in need of supportive services.

--Andrew Forman, Boston Center for Independent Living: To solve not manage fair housing problems for disabled persons: expand the Community Based Housing Program; need to create opportunities for independence; expand the Facilities Consolidation Fund which would help facilitate the construction of housing units for persons with disabilities who can't find an accessible unit or are housed in a non-accessible unit; double the bond cap for allocation for the Community Based Housing Program over the next four years; and expand the Affordable Housing Trust Fund for persons with disabilities.

--Barbara Chandler, Adaptive Environments: DHCD, MassAccess (commenter likely intended to state MassHousing) and MassDevelopment should be proactive in developing housing options that promote integrated housing for persons with disabilities, as segregated housing projects that are serve oriented only serve a small segment of persons with disabilities.

--Inta Hall, Brain Injury Association of Massachusetts: Expand the Facilities Consolidation Fund. Expand Community Based Housing Fund by doubling the bond cap allocation over the next four years, which would help facilitate construction

*Response:*

Governor Patrick's Fiscal Year 2008 budget recommendations were announced after the release of the Draft Analysis of Impediments to Fair Housing 2006. Said recommendations include proposed funding of \$3,500,000 for the Alternative Housing Voucher Program

As the 2008 budget has not yet been established, DHCD cannot commit at this time to funding allocations, although it will report on such allocations in its FY 2008 Action Plan.

With respect the comments on HOP and TBRA funding, DHCD is currently examining its population-specific programs section 8 Housing Choice Voucher Programs (HCVPs). There was essentially no ability to issue new vouchers in 2007; however in 2008, DHCD will consider re-establishing "baselines" for the targeted population programs. Subsequently, when DHCD is able to start issuing HCVPs, as programs lose participants, they could potentially re-issue vouchers to replace the former participant. Such approach would enable programs to function while ensuring that people are assisted in a range of programs without furthering specific disability set-asides. Due to the fact that even in 2008 DHCD's ability to serve new participants in any HCVP-based program will still be limited, the proposed "graduation" will have to be reserved for future consideration.

E. Augment accessibility requirements; require universal design and visitability in programs

*Recommendations:*

--Pamela Howland, Natual Siding Associates, Inc. (member of Home Builders Association of Western Massachusetts): Fair Housing Centers should be funded to monitor ADA compliance in new multi-family construction.

--Evelyn Milorin, Boston Center for Independent Living: DHCD should proactively implement universal design in all state funded units to reduce segregation and isolation of disabled persons. Allow people to age in place.

--Inta Hall, Brain Injury Association of Massachusetts: Principles of universal design in all state funded housing units would help provide flexibility and establish standards for new construction in Massachusetts.

--Barbara Chandler, Adaptive Environments: DHCD, MassHousing, and MassDevelopment should proactively determine that all its funded housing meets the minimum accessibility regulatory requirements of the federal Fair Housing Amendments Act of 1988, the MA Architectural Access Board, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act and Massachusetts Chapter 151B. The Access code requirements only cover the needs of a small portion of persons with disabilities, predominantly with mobility issues. The adoption and mandating of universal design principles by DHCD would expand the available housing stock for persons with disabilities, elders aging in place and families with young children. AAB should be more in line with IBC 2003 Model Building Code. Integrated housing is not limited to accessible units and should include visitability. DHCD should remind housing providers of their obligation under HUD requirement to move a disabled person in need of an accessible unit ahead on the waiting list when such a unit becomes available.

HUD regulations in federally funded housing require the standard lease clause providing that a non-disabled family living in an accessible unit may be relocated if said unit is needed. DHCD mandates the same lease provision. DHCD should review all LHAs and other DHCD funded housing providers have such a clause as their standard policy and are implementing it correctly.

*Response:*

DHCD will take into consideration Universal Design and visitability principles in its funding evaluation criteria, and will advise its quasi-public partners and community stakeholders of the benefits of incorporating such principles. DHCD will also provide materials on state and federal fair housing accessibility requirements, and encourage its quasi-public partners to do the same. DHCD will work with its partners, including fair housing centers, to respond to allegations of non-

compliance with applicable state and/or federal accessibility requirements, and DHCD will appropriately refer complaints of non-compliance to the Massachusetts Commission Against Discrimination.

DHCD will also propose incorporating HUD requirements with respect to waiting list placement of disabled individuals in its fair housing materials. DHCD will propose amending its regulations pertaining to LHAs to explicitly state the mandate for relocation of non-disabled households to non-accessible units upon availability, while balancing the need to reasonably accommodate disabled persons without wheelchairs located in wheelchair accessible units. Proposed amended regulations would also require LHAs to annually report by project on the number of selected applicant households requesting an accessible unit (wheelchair and/or sensory), the number of said households that received the requested unit, and the total number of occupied accessible units.

F. State enforcement of the duty to affirmatively further fair housing

*Recommendations:*

--Judith Liben, MLRI: Action steps should address the primary enforcement problem, which most advocates agree, is the inadequate functioning of MCAD. The AI should propose legislation that would, like federal law, obligate state and local governments to “affirmatively further fair housing” in all of their programs, and allow private enforcement of the obligation.

--Tory Rockett, FHCGB: As the state’s primary enforcement agency, DHCD should advocate for fair housing enforcement and focus on education and outreach.

-- Barbara Chandler, Adaptive Environments: DHCD, MCAD and the state Attorney-General should establish a collaborative approach to develop a significant and effective plan that would affirmatively further fair housing throughout the Commonwealth for all protected classes.

*Response:*

Although the Massachusetts Commission Against Discrimination is the Commonwealth’s primary enforcement agency of fair housing laws, the Draft Analysis of Impediments to Fair Housing proposes actions that DHCD will take, in cooperation with its partners, to augment fair housing education as a means for addressing and preventing discriminatory practices. The Massachusetts Commission Against Discrimination and state Attorney General as well as HUD are resources for DHCD to affirmatively furthering fair housing. DHCD will also consider requiring jurisdictions requesting state funding to submit an Analysis of Impediments to Fair Housing Report to the Commonwealth, in manner and purpose that is substantially equivalent to HUD requirements, to aid in the prevention and redress of unlawful disparate impacts on protected classes.

G. Sanctions for communities that do not meet their affordable housing goals

*Recommendations:*

--Pamela Howland, Natual Siding Associates, Inc. (member of Home Builders Association of Western Massachusetts): Sanction communities that do not meet target affordability levels. Specifically the state could penalize communities that fall short of targets of annual permits issued and transfer their lost aid to communities that meet or exceed targets. A regional entity should be empowered to move funds to communities that meet the needs of the region. Plaintiffs bringing frivolous lawsuits as delay tactics to those seeking comprehensive permits should pay defendant’s attorney costs if defendant wins.

--Judith Liben, MLRI: The Patrick administration should consider reviving and actually implementing Executive Order 215, which provides meaningful sanctions for communities with unreasonably restrictive housing policies.

--Tory Rockett, FHCGB: The state should adopt stronger penalties for communities with restrictive zoning. It may be necessary to train local zoning officials on their obligations.

--Barbara Chandler, Adaptive Environments: Restrictive zoning has a disparate impact under the Fair Housing Act and Chapter 151B. DHCD should explain to communities that this is a violation of fair housing laws, not just offer incentives.

*Response:*

Executive Order 215 provides that “It should be the general policy of state agencies not to award (development-related) discretionary funds to cities or towns which have been determined to be unreasonably restrictive of new housing growth.” Such determination, as provided by Executive Order 215, is made based upon the Secretary’s evaluation of evidence. The community may then formulate a strategy to facilitate development of affordable housing, and may request assistance from the Department. Pursuant to said Order, once a strategy has been developed and approved by the Secretary and the local boards and commissions responsible for its implementation, the Secretary shall notify all appropriate state funded agencies that the city or town is not unreasonably restrictive of new housing growth.

DHCD plans to examine pro-active strategies for re-invigorating Executive Order 215. Such strategies may include critically reviewing proposals for adoption and amendment of zoning ordinances and bylaws, as DHCD must be notified of such proposals. DHCD would apply Executive Order 215 procedures to its programs, as well as the programs of its quasi-public partners, that provide discretionary funding to cities and towns.

H. Funding/integrating fair housing into programs

*Recommendations:*

--Barbara Chandler, Adaptive Environments: Fair housing must be incorporated into all housing activities as standard practice. DHCD has done a good job by incorporating design principles into its Chapter 40R and low income housing tax credit programs. Those programs mandate that housing must be designed to meet the needs of diverse communities (which means designed to meet the needs of persons with disabilities, large families, families with small children, and elders), and this mandate should be incorporated into all DHCD housing programs. 40S funding should include funding for special education so that families with disabled children are able to move into communities. Supports language in this action step, and it would also be a support to parents with children with special needs who often are forced to relocate to get adequate special education services. The ten Principles of Sustainable Development should be incorporated into all DHCD housing programs.

--Pamela Howland, Natual Siding Associates, Inc. (member of Home Builders Association of Western Massachusetts): DHCD funding policies need to be regionally focused. DHCD should create a regional entity to make decisions about regional equitable planning. The local assessment of housing needs required by grant applications for state and federal housing funds does not universally obligate towns to address regional needs. Areas of concentrated poverty must be identified in every grant or loan and residents from those areas must benefit from tax-payer financed housing outside those areas. The Move-to-Opportunity programs are individually-focused. DHCD must take a project-based approach to providing a way out for the people who “miss out.” The current concern of the public on environmental sustainability should be used to garner support for mixed-use communities.

--Judith Liben, MLRI: Applaud DHCD's commitment to reviewing funding commitments to disperse its housing around the state and also, when decisions are made to locate housing in poor and minority areas, to ensure that those areas truly are experiencing revitalization in jobs, education, safety and other features showing real improvement of those areas. AI is meant to: establish a presumption against siting new state-assisted housing in high poverty minority areas unless the housing is apart of a demonstrable program to improve those neighborhoods to achieve similar attributes of existing "opportunity areas"

--Tory Rockett, FHCGB: The state should ensure fair housing is part of every affordable development. Fair housing is more than money and thus won't solve fair housing issues alone. The AI should address discrimination in the private market, especially Section 8. DHCD should be applauded for its Smart Growth initiatives and must include a racial lens by considering patterns of segregation. Public investments for new suburban communities can exacerbate urban disinvestment if don't emphasize fair housing perspective of Smart Growth

--Victoria L. Williams, Boston Fair Housing Commission: In review of developer applications for State resources (land or funds), the State should prioritize, and/or award bonus points to those developments which will be located outside of areas which have high concentrations of government-assisted housing, low-income households, and/or minority households.

*Response:*

In addition to DHCD's Analysis of Impediments to Fair Housing, DHCD's FY 2007 Action Plan states that DHCD supports the fundamental principles of promoting fair housing and sustainable development. These principles drive the decision making behind programmatic activities, planning and policy making of DHCD in order to meet the state's housing and community development needs and continually improve the quality, affordability and availability of housing and communities across Massachusetts. Thus, fair access and sustainable development principles are required of all programs.

Promoting fair access requires an integrated approach of promoting mobility as well as providing permanent affordable housing. The Draft Analysis of Impediments to Fair Housing addressed the importance of factoring in the goal of deconcentrating poverty when determining funding allocations for future development sites. DHCD cannot establish a presumption of denying funding for housing to be located in a particular location based on race, as this would be impermissibly making unavailable housing in violation of fair housing laws.

However, DHCD will carefully scrutinize program requirements for unintended inconsistencies with fair housing policies and obligations. In the Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan (QAP), DHCD will evaluate whether decreasing points for projects with local support and other modifications to the QAP will mitigate unintended effects on fair housing access, such as disincentives for developers to site projects in low poverty communities that create impediments to multi-family and subsidized housing.

DHCD will evaluate increasing points provided under the LIHTC program<sup>8</sup> and creating project siting criteria in other state programs to further fair housing access for diverse needs and promote

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<sup>8</sup> DHCD will examine modifying QAP scoring to increase points for:

- 2) census tracts with low poverty rates;
- 3) communities with less than 10% subsidized housing stock;
- 4) projects with greater than three bedrooms;
- 5) projects that incorporate universal design and/or visitability;
- 6) projects that restrict greater than 10% of units for households at or below 30% of the area median income;

development in low poverty areas, or, in higher poverty areas undergoing significant community revitalization or other local benefits (including employment, transit, and services).

I. Expand the statutorily required data collection beyond statutory requirements

*Recommendations:*

--Judith Liben, MLRI: There is no data showing the successes of 40B and other policies that incentivize development reveal successes in desegregation and have contribute do racial integration in the commonwealth (i.e., Commonwealth Capital Fund resisted any evaluation during its existence). DHCD should implement the data collection law beyond the bare minimum required under the law

--Barbara Chandler, Adaptive Environments; Inta Hall, Brain Injury Association of Massachusetts: Data collection should be used as a way to work with LHAs and private developers not meeting goals of affirmative marketing on race/ethnicity, disability, and families with children. Information that should be collected on persons with disabilities: the number and location of all accessible housing units funded or administrated by DHCD, MassHousing, and MassDevelopment; the number and location of all accessible housing units which are either vacant or occupied by residents who do not need accessible features; the number of individuals or families who require housing units with accessible features who are living in inaccessible units; the number of individuals and families who receive MRVP assistance (or who are on the waitlist) who have a family member with a disability and the number of these families who have a head of household with a disability; the number of individuals and families who are in state-funded public housing who require housing units with accessible features but are living in inaccessible units; the number of individuals and families who require housing units with accessible features and are on waiting lists for state-funded public housing; the percentage of younger persons with disabilities and elders living in state-aided elderly/disabled housing.

*Response:*

DHCD will consider the above recommendations in implementing its data collection statutory obligations; however, state and federal legal obligations with respect to permissible data collection inquiries and will be carefully scrutinized. Implementation of data collection will be phased, as DHCD undertakes the formidable task of coordinating information and database systems across housing programs and housing agencies.

J. Further mobility by increasing vouchers, providing one-stop shopping for affordable housing, and centralizing housing counseling

*Recommendations:*

--Billy Tyler, on behalf of disabled persons in the Boston area: need more housing vouchers

--Andrew Forman, Boston Center for Independent Living: Expand the Massachusetts Rental Voucher Program and the Alternative Housing Voucher Program.

--Inta Hall, Brain Injury Association of Massachusetts: Since affordability is a major problem, the expansion of the rental voucher programs would provide some relief. The cuts to these programs are in need of restoration.

--Barbara Chandler, Adaptive Environments: DHCD has done an excellent job on promoting its lead paint removal program and providing funding for deleading to small housing providers. It must be clearly stated that under both state and federal fair housing law, denying housing to families with small children

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7) Fair housing points, and/or requiring affirmative fair housing activity from communities seeking points for local support.

is discriminatory. DHCD should look at the HUD funded outreach program BFHC conducted in 2002, which focused on training and deleading resources for small housing providers, and consider duplicating this effort on a larger scale or as a pilot project to test its effectiveness statewide. Similar to MassAccess database, DHCD should develop a database of de-leaded units.

--Judith Liben, MLRI: AI should propose that the state create a one-stop shopping environment so that people in all communities can learn about and apply to all government enabled housing-- something like real estate listings on the internet—combined with either eliminative or severely restricting residency preferences, vigorous affirmative marketing, and other inclusive techniques. Further, the state should administer a wide ranging mobility and counseling program similar to the federal “Moving to Opportunity” program. AI should state who will employ mobility programs, how they should be funded, where they should exist, what there goals should be, and when results should be available

*Response:*

The Draft AI provided for promotion of housing mobility by evaluating and responding to gaps in existing resources available to housing consumers. DHCD continues to support its current funding of regional administering agencies and their Housing Consumer Education Centers (HCECs), which are located in geographically diverse locations and provide consumers with resources to locate and obtain housing across the state. The Metropolitan Boston Housing Partnership (MBHP), one of DHCD’s eight regional agencies, has provided extensive mobility counseling through its Community Choice Voucher Program, which as discussed earlier in this report, has achieved similar successes as HUD’s Moving to Opportunity Program. DHCD will evaluate options to increase funding for the regional agencies or similar organizations to further mobility success throughout the state.

DHCD will also propose revising its regulations to be more consistent with relevant HUD requirements pertaining to PHAs administering Section 8 mobile vouchers. As part of the briefing of the selected family, PHAs must explain to families currently living in a high poverty census tract in the PHA’s jurisdiction the possible advantages of moving to an area that does not have a high concentration of poor families. The PHA may not however discourage a family from choosing to live in or outside the PHA jurisdiction.

Information on delead units throughout the Commonwealth is maintained by the Massachusetts Department of Health. DHCD will incorporate information on tenant housing and fair housing rights with respect to lead paint in its future fair housing materials.

With respect to one-stop applications for subsidized housing, DHCD is currently focused on developing SAPHIRE (Single Application for Public Housing Intake and Referral Elements), which would improve the application submission process and create a repository for all applications, both electronic and manual filings. DHCD is also evaluating development of a single waiting list for the Section 8 housing choice voucher program that it administers.

K. Review/reconsider current affirmative fair marketing and residency preferences

*Recommendations:*

--Pamela Howland, Natual Siding Associates, Inc. (member of Home Builders Association of Western Massachusetts): Affirmative marketing requirements should be more consistent across regions rather than by individual communities. DHCD should fund Massachusetts Fair Housing center and the Fair Housing Center of Greater Boston to monitor affirmative fair marketing. (Pamela Howland also recommended

that the fair housing centers be funded to challenge systemic discrimination in lending practices and be notified of any potential Chapter 40B applications, and suggested that fair Housing Centers send volunteer monitors to public hearings on any 40B subject to ensure that uncivilized behavior against affordable housing is publicized, and should monitor harassment of developers who seek to include affordable housing in their developments).

--Judith Liben, MLRI: Even if all restrictions on development of affordable housing in “opportunity areas” were removed, much more work must be done to open up this housing to people of color. Propose that the Commonwealth either prohibit all local residency preferences for government assisted housing, or adopt various compromise proposals that substantially limit preferences when they have the effect of excluding people of color. To that end, endorse the last action step under Impediment # 11. The Commonwealth must review the effectiveness of its affirmative marketing requirements to that they will better inform and encourage people of color to apply to newly developed or preserved affordable housing in “opportunity areas.”

--Victoria L. Williams, Boston Fair Housing Commission: DHCD should review the terms of the EOCD/DHCD Agreement in response to the NAACP v. HUD Consent decree (June 23, 1989), whereby EOCD/DHCD agreed to participate in programs designed to promote housing opportunity and to facilitate participation by MHFA/MassHousing and its owners/managers in any such programs. In accordance with the Agreement, EOCD/DHCD agreed to market State-assisted housing, sales, and rental, through the Metropolitan Housing Opportunity Clearing Center (Metrolist) administered by the Boston Fair Housing Commission. Such review should include working with Metrolist to establish a process to ensure that Metrolist is notified when individual developments are approved for funding, or property designation, and when they are prepared to market to the public.

--Victoria L. Williams, Boston Fair Housing Commission: Specific steps should be taken to expand housing opportunities for minority and low-income households throughout the State. For example, the State should no longer approve resident (local) preferences in public housing in communities where the minority population is less than the minority population of the State as a whole (15%).

--Barbara Chandler, Adaptive Environments: LHAs and other DHCD funded housing providers should have pro-active and effective outreach plans to persons with disabilities and the agencies that serve them. DHCD or through additional funding of MassAccess should monitor the mandates of Chapter 151B that requires that all units with accessible features be listed with MassAccess and held vacant for two weeks for prospective tenants who need such features. In addition, LHAs and other DHCD funded housing providers should be submitting their outreach plans for review as part of their Affirmative Fair Housing Marketing Plans. Residency preferences in tenant selection create a barrier to relocation for persons with disabilities, particularly those who must find accessible housing quickly due to the recent or unexpected onset of a disability, and also need accessible public transportation, specialized medical care and support services.

*Response:*

DHCD will propose revising current LHA regulations on affirmative fair marketing to be more equivalent to related HUD requirements. For example, DHCD will examine revising regulations governing fair marketing plans of local housing authorities to include the requirement that LHAs identify and review special efforts to attract applications not only from underrepresented minority groups, but also to disabled persons, families with children, and other low income groups that are least likely to apply for housing without special outreach. DHCD will also consider incorporating HUD regulatory requirements for PHAs that use site based waiting lists.

DHCD will be revising its Chapter 40B regulations to standardize and provide regulatory authority for Affirmative Fair Marketing Plan requirements across state programs. DHCD will also examine incorporating the following into said requirements:

- 1) To avoid a discouraging effect of marketing of local residency preferences, such marketing or advertising must also state that the use of residency preferences will not have the purpose or effect of delaying or otherwise denying admission to the program in violation of applicable civil rights laws;
- 2) Affordable use restrictions and the affirmative fair marketing plans must require that available affordable units will, whenever they become available, be listed with Boston's Metrolist if the property is located in the Metro Boston area, be listed on CHAPA's Mass Accessible Housing Registry website and lottery website, and accessible units with the Massachusetts Rehabilitation Commission. (Author's Note: M.G.L. c. 151B 7A now requires that the owner give at least fifteen days notice of the vacancy of an accessible unit to the Massachusetts Rehabilitation Commission. Said section requires the Massachusetts rehabilitation commission to maintain a central registry of accessible apartment housing pursuant to M.G.L. Chapter 6 § 79. DHCD will make reference to this new requirement in its fair housing education and outreach to further assist disabled consumers);
- 3) Project sponsors must certify to DHCD that they reported unit availability to the Metrolist when submitting income verification and other reporting requirements;
- 4) DHCD programs will be required to submit an annual written assessment of affirmative fair marketing plan procedures and compliance for review; DHCD's partner agencies will be advised of the same; and
- 5) Evaluate results of data collection efforts to evaluate whether revised affirmative fair marketing plans are needed.

Should DHCD determine to incorporate the above (or other) affirmative fair marketing requirements into its programs, DHCD will also advise its quasi-public partners to take similar actions in their respective programs.

DHCD and its partner agencies will continue to assume the responsibility of ensuring that affirmative fair marketing plans are required and reviewed through each of its programs. Due to the complexity and diversity of program types, as well as large number of subsidized units, relegating authority to fair housing centers to monitor said plans would not be the most appropriate solution. However, DHCD will continue to examine its program requirements to ensure reasonable consistency with affirmative fair marketing plan requirements across its programs and the programs of its partner agencies. DHCD will refer to the Massachusetts Commission Against Discrimination and state Attorney General as well as HUD as resources for responding to discriminatory practices, and may also consult fair housing centers for such purpose.

DHCD agrees that further funding for fair housing activities is needed. At this time DHCD does not have similar funding or monitoring capacity as HUD, which funds Fair Housing Initiative Programs (FHIPs) for activities that include private enforcement, education and outreach, and administrative enforcement. However, DHCD will attempt to identify appropriate funding opportunities and seeks to collaborate with other organizations in doing so.

While DHCD currently requires, through its affordable housing restrictions, project sponsors to affirmatively fair market units and list housing located in the Boston MSA with Metrolist, DHD will also evaluate methods through which it may better serve the Metrolist as intended in the agreement between EOCD and HUD.

With respect to residency preferences, DHCD is currently examining its Section 8 regional tenant selection preferences for a potential disparate impact on minorities. January 2007 findings on an

informal 2002 experiment of a fictional applicant on each of the eight regional waiting lists<sup>9</sup> has prompted DHCD to carefully scrutinize its Section 8 program and to identify the most appropriate response, which may include adopting a statewide waiting list.

DHCD will also critically examine its current implicit policy of permitting up to 70% local selection preference in its housing development programs, including the impact such a policy has over time, and will advise its quasi-public partners of the same.

L. Make AI document more of a practical tool

*Recommendations:*

--Judith Liben, MLRI: The AI should clearly state the meaning of the legal obligation to “affirmatively further fair housing.” Suggested use of maps by Harvard Civil Rights Project and other groups so that the picture of racial segregation is easy to understand. Remove data and research from Action Steps section to make document more effective

----Tory Rocket, FHCBG: The FHCBG thinks the document is for DHCD to determine whether is exacerbating or mitigating segregation

--Judith Liben, MLRI; Tory Rocket, FHCBG: The Action Steps not specific enough; The AI should be more actionable by providing a better sense of how to measure progress

*Response:*

In addition to the legal obligation to affirmatively further fair housing discussed in legal framework section of the report, DHCD has emphasized reference to this section in Action Steps and has incorporated the suggested additional HUD language.

Moreover, DHCD has made the Executive Summary a more useful overview of the document, provided a more detailed table of contents for practitioners to find relevant data, and provided map references to illustrate residential patterns by race and ethnicity in Massachusetts

Several paragraphs of key research in the section of the Draft AI entitled “Analysis of Impediments to Fair Housing and Action Steps to Mitigate Them,” were included to directly illustrate and emphasize policy implications for future state action, particularly in anticipation that greater attention might be placed on said section of the report. To accommodate the recommendation of the MLRI, DHCD has moved said paragraphs to the Data Analysis Section and has referenced the location of these paragraphs within the Action Steps section.

The Draft Analysis of Impediments to Fair Housing aimed to be transparent in its extensive analysis of data pertaining to race, ethnicity, disability, and family size in its programs and in federal programs, and in its reporting on race and income related findings by other organizations. In the future, DHCD will examine and report on data that it is statutorily required to collect, which will provide an even fuller picture of residential patterns by race/ethnicity, accessibility, age, income level, and familial status.

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<sup>9</sup> In 2002, the Massachusetts Law Reform Institute (MLRI) and DHCD engaged in a very informal experiment to track the selection waiting times for a fictional applicant that DHCD planed on each regional list on the same date and time. By January 2007, this fictional applicant had been selected by four of the eight regional agencies. The four agencies that have not selected the fictional applicant contain 2/3 of all applicants and a generally higher share of minorities.

DHCD has committed itself to future policy guided action without yet reaching the implementation phase that will require more detailed and timely budget and staffing coordination. DHCD will illicit feedback and specific recommendations that to assist in the implementation phase, and thus far has conducted five public meetings and two hearings on the document and has reconvened the Fair Housing Advisory Panel towards this end.

Moreover, HUD provides that jurisdictions may include actions the jurisdiction plans to take to overcome the effects of impediments to fair housing choice during the coming year in the Annual Plan that is submitted as part of the Consolidated Plan Submission. As stated above, prior to the release of its FY 2008 Action Plan, DHCD will further consider nearer-term implementation activities that it will undertake, and activities that it will recommend to its state partners.

*Additional Summary of Other Comments to the DRAFT AI*

--Pamela Howland, Home Builders Association:

Springfield and Holyoke have two of the most entrenched poverty problems in the country, with 34 and 51 percent respectively of their poor populations living in so-called “high-poverty neighborhoods” (of 40% or higher.) Massachusetts Institute for a New Commonwealth and the Brookings Institute. Desire for Action Steps to be more specific. Chapter 40B is the only real tool for fair housing in the state. Incentives that have been tried in legislation such as 40R and the CPA simply do not build affordable housing, much less address the issues of concentrated poverty and racial segregation.

--Judith Liben, attorney for the Massachusetts Law Reform Institute (MLRI):

The AI is meant to provide a blueprint for all relevant state agencies, not just DHCD, to address residential segregation. The AI should be a practical and useful guide for state agencies to: utilize their housing and other programs to create enhanced access for racial and ethnic minorities to “opportunity areas”; establish a presumption against siting new state-assisted housing in high poverty minority areas unless the housing is apart of a demonstrable program to improve those neighborhoods to achieve similar attributes of existing “opportunity areas”; and to assist the state to determine if the effect of housing and other programs, even if unintentional, limits choice and opportunity for people of color. The AI contains a remarkable amount of data and issues addressed. As such it is unwieldy, and the PowerPoint presentation provided during the public meeting today should be made available. The substantive comments to be made on the AI are addressed in the AI itself but should be given more emphasis. Example: impediment #12 which provides for incorporating fair housing principles in DHCD programs and activities should zero-in more on how principles can be used. Suggestions in the AI are too vague—need to know how to evaluate progress in two years. The AI focuses too much on DHCD and not on other agencies of the state that are also obligated to affirmatively further fair housing, such as MassHousing, the Department of Transitional Assistance, DMR, DMH, and MRC.

--Tory Rockett, Fair Housing Center of Greater Boston

The FHCBG focuses primarily on race, national origin, families with children, and source of income. Comments were prepared in conjunction with FHAP, CHAPA, MLRI, and Adaptive Environments. The FHCBG appreciates the tremendous efforts of DHCD and looks forward to working with DHCD in the future. Governor Deval Patrick’s Executive Order 474, Section 4 provides that diversity should be affirmatively furthered in all state programs. The FHCBG thinks the AI document is for DHCD to determine whether it is exacerbating or mitigating segregation. The AI is meant to be a blueprint for all agencies and should be a practical and useful document for local officials. The AI should be used to define actions DHCD will take and what others should take. The AI is also meant to assist state in determining effects of state’s programs. The AI should be more actionable by providing a better sense of how to measure progress

--Laurie Bloom, Deputy Executive Director for JRI Health:

DHCH no longer ensures that the TBRA program retains access to rental subsidies. Even as regional housing agencies are authorized to begin issuing new subsidies to other individuals in need, not only are no additional subsidies being made available to TBRA, there are not sufficient subsidies made available to allow the program to continue to serve its current number of clients and its ever growing waiting list. DHCD no longer ensures a steady allocation of subsidies for the HOP program. HOP's access to subsidies for disabled individuals is essentially frozen, and the program's capacity to provide access to vital services enabling successful housing for existing clients is shrinking as well. This supported apartment program for disabled individuals no longer receives any priority, even as DHCD has authorized regional housing agencies to begin issuing new subsidies.

--Inta Hall for Brain Injury Association of Massachusetts

The majority of people with brain injuries prefer living in the community, but the lack of affordable housing that is accessible and possibly close to some family members, is a roadblock. Many are inappropriately placed in nursing homes for many years. The AI correctly identifies segregation and stigmatization as a problem for people with disabilities

--Victoria L. Williams, Boston Fair Housing Commission

The AI. in its discussion of the Community Choice Voucher Program (CCVP), should be revised to include the BFHC's role in a similar endeavor. By the conclusion of Boston's Housing Choice Counseling Program (HCCP), the Commission had assisted 380 families (98.7%) with leasing housing in predominantly white areas, which included 14 Boston neighborhoods and over forty cities and towns.

--Billy Tyler, advocate on behalf of disabled persons in the Boston area:

Comments/issues on AI:

It is important to note the amount of housing not available to persons with wheelchairs and to disabled persons under 50, and cautions against elderly housing that reduces the allowable percentage of disabled persons.